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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,347	07/14/2000	JOHANNES REINMULLER	HUBR-1162-PF	2655

7590 03/12/2003

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/600,347

Applicant(s)

REINMULLER, JOHANNES

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) 1-5, 7-16, 19-21, 25 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6, 17, 18, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.

- 4) ☐ Interview Summary (PTO-911) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Jerome W. Donnelly
Primary Examiner

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II in Paper No. 11 is acknowledged. The traversal is on the ground(s) that a search of Groups II and IV would substantially overlap such that it would not be an undue burden on the Examiner to search both groups and would significantly streamline prosecution. This is not found persuasive because Applicant has not indicated that the election/restriction requirement was made in error and because a search for Group IV in 601/154⁺ is not required for Group II.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-5, 7-16, 19-21, 25 and 26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 11.

Specification

3. The disclosure is objected to because of the following informalities: the specification on page 6, lines 38-39 and on page 9, lines 9-11 indicate that the pressure is preferably 10 to 30 kg per cm² of skin, particularly preferably 2 to 9 kg per cm² of skin which is unclear because the particularly preferable range of 2 to 9 is not within the preferable range of 10 to 30.

Appropriate correction is required.

4. The specification lacks headings and the claims do not begin with I or we claim.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 112

5. Claims 18 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 18, the recitation “regulated to produce resonance effects with restoring forces of tissue” on lines 2-3 is indefinite because it has not been clearly defined what constitutes resonance effects with restoring forces making the metes and bounds of the claims vague.

In claim 23, the recitation that the regional transdermal pressure is “sub-regional transdermal pressure” is vague because it is not clear what exactly is meant by “sub-regional” or how it is different from regional transdermal pressure. If it is different, what exactly enables application of pressure there?

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 17, 18 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Werdning* (US Pat. 3,878,837). *Werdning* discloses a massage apparatus for applying pressure and vibration to an area of skin for treatment of “cellulitis.” One of ordinary skill in the art would realize that *Werdning*’s use of the term “cellulitis” is inaccurate and should have

used the term "cellulite" since "cellulites" is a bacterial infection of the skin and *Werding* discusses bursting of nodules by massage and kneading. Bursting of infected nodules accumulated in connective tissue would clearly be contrary to safe medical practice. The apparatus comprises rollers that impact a user at a variable frequency that may range from 25 to 100 impacts per second (this falls within the claimed range of 5 Hz to 20 kHz) and pressure is applied by exerting greater or lesser pressure on the handle of the support. It may also be possible to vary the intensity of the massage by adjusting the position of the rim of the apparatus relative to the rotor 2. The frequency of the apparatus is regulated by adjustment of a rheostat. *Werding* also discloses that it is known in the art to treat cellulite by manual massage, such as by kneading, to a point of being painful, or by a jet of water or air at pressures of about 6 atm.

Werding does not disclose the regional, transdermal pressure exerted on an area of the skin being 10 to 30 kg per cm² (claim 6); and the regional, transdermal pressure is sub-regional transdermal pressure of 10-30 kg per cm² of skin (claim 23).

Werding teaches that it is known to provide massage to the point of being painful. Furthermore, it is well known that the pressures produced by an impact are significantly larger than pressures applied by non-impact means. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the regional and sub-regional pressure applied by the *Werding* massage apparatus may be applied to the pain tolerance level of the patient, which would fall within the range of 10-30 kg per cm². If no patient were able to tolerate such a pressure, then the method would be non-enabled. Also, pressure from an impact is well known to be far greater than pressure applied steadily.

8. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Werdning* (US Pat. 3,878,837) as applied to claim 6 above, and further in view of *American Health* (Yikes! Cellulite, Nov. 1988). *Werdning* discloses the inventive method as claimed except for repeating the method at least once.

It is notoriously old and well known in the massage art to repeat a procedure in order to get the results desired. *American Health* discloses treating cellulite by heavy duty kneading on one area for a period of time, several times a week and repeating this treatment 6 to 12 times.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to repeat the method disclosed by *Werdning* at least once, in order to see results as taught by *American Health*.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rogers, Jr. (US Pat. 3,970,078), *Henderson* (US Pat. 4,086,922), *Chubinsky* (US Pat. 5,843,005), *Sivan et al.* (US Pat. 6,511,445 B2), *Lenke* (WO 94/24980), *Brummett* (No butts about it: Obsession with cellulite has worn thin, *Colorado Springs Gazette-Telegraph*, April 12, 1997, pg. E8), *Burki* ('Massage' Technique Can Smooth Cellulite, *The Salt Lake Tribune*, Nov. 6, 1997, pg. C4), and *Meyer* (the truth about cellulite, *Shape*, Aug. 1998, pgs. 101-103, 154) disclose various apparatus and methods for treatment of the cellulite condition.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting Official papers to Technology Center 3700 is (703) 872-9302 and for submitting papers After Final to Technology Center 3700 is (703) 872-9303.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



Victor K. Hwang
February 25, 2003

Jerome W. Donnelly
Primary Examiner

